

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
APPENDIX**





# 76-1320

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

-----x  
:  
UNITED STATES OF AMERICA,  
:  
Plaintiff-Appellee,  
:  
-against-  
:  
KINGSLEY ROTARDIER and  
:  
JUAN MacDOUGAL-PENA,  
:  
Defendants-Appellants.  
:  
-----x

B P/L  
Docket No. 76-1320

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JOINT APPENDIX TO APPELLANTS' BRIEFS

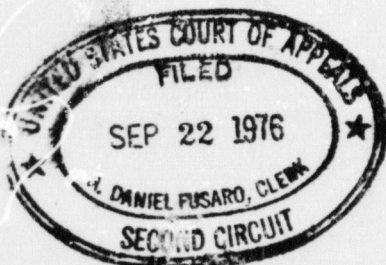
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ON APPEAL FROM JUDGMENTS  
OF THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

PAUL B. BERGMAN, ESQ.,  
Attorney for Appellant  
KINGSLEY ROTARDIER  
25 Broadway  
New York, New York 10004  
(212) 269-4900

WILLIAM J. GALLAGHER, ESQ.,  
THE LEGAL AID SOCIETY,  
Attorney for Appellant  
JUAN MacDOUGAL-PENA  
FEDERAL DEFENDER SERVICES UNIT  
509 United States Court House  
Foley Square  
New York, New York 10007  
(212) 732-2971  
SHEILA GINSBERG, Of Counsel.



PAGINATION AS IN ORIGINAL COPY



CRIMINAL DOCKET - U.S. District Court

OFFENSE PO ☐ JUDGE ☒ Assigned U.S. vs. **ROTARDIER, KINGSLEY a/k/a** Case Filed Mo. Day: **05 '14** 76 0481 01  
OFFENSE MO ☐ **0839** "Div Reveault"  
MEASOR MIS ☐ **0208 1** (LAST, FIRST, MIDDLE)  
FELONY Fel ☒ **0208 1** (LAST, FIRST, MIDDLE) JUVENILE ☐ # **02**

U.S. TITLE/SECTION: 18:371  
18:2314

OFFENSES CHARGED: Consp. to transport stolen securities.  
Interstate transportation of stolen securities.

ORIGINAL COUNTS: 1  
2, 3

719

U.S. MAG. CASE NO. **76 0481 01**

BAIL - RELEASE

☐ AMT ☐ Fugive  
Denied Set ☐ Pers. Recog  
☐ PSA  
S ☐ 10% Deposit  
Date ☐ Surety Bond  
☐ Bail Not Made ☐ Collateral  
☐ Status Changed (See Docket) ☐ 3rd ☐ Pity Cust ☐ Other

II. KEY DATES & INTERVALS

ARREST or U.S. Custody Began ☐ INDICTMENT ☐ Information ☐ ARRAIGNMENT ☐ TRIAL ☐

High Risk Date ☐ Trial Set For ☐ Voir Dire ☐

Summons Served ☐ Indict. Waived ☐ 1st Plea ☐ ☐ G ☐ NOL ☐ Trial Began ☐ N ☐ J

First Appearance ☐ In Charging District ☒ Superseding ☒ Indict. info ☐ Final Plea ☐ ☐ G ☐ NOL ☐ Trial Ended ☐

5-14-76

SENTENCE

Disposition of Charges ☐ Convicted ☐ On An Charges ☐ On Lesser \* Offense ☐ Dismissed ☐ WOP ☐ WP ☐ On Government's Motion

MAGISTRATE

Search Warrant ☐ Issued ☐ Return ☐ Summons ☐ Issued ☐ Served ☐ Arrest Warrant Issued ☐ COMPLAINT ☐ OFFENSE (In Complaint) ☐

DATE ☐ INITIAL/NO. ☐

INITIAL APPEARANCE DATE ☐ PRELIMINARY EXAMINATION ☐ OR ☐ REMOVAL ☐ HEARING ☐ WAIVED ☐ NOT WAIVED ☐ INTERVENING INDICTMENT ☐

DATE ☐ Date Scheduled ☐ Date Held ☐

INITIAL/NO. ☐

OUTCOME: ☐ DISMISSED ☐ HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT ☐ HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW

Tape Number ☐

U.S. Attorney or Asst.

James E. Nesland  
791-0047

ATTORNEYS

Defense ☐ CJA ☐ Ret ☐ Waived ☐ Self ☐ None / Other ☐ F.D. ☐ C.D.

BEST COPY AVAILABLE

\* Show last names and suffix numbers of other defendants on same indictment/information

DATE: 5-14-76 DOCUMENT NO.: PROCEEDINGS: EXCLUDABLE DELAY: (a) (b) (c) (d) (e) (f) (g) (h) (i) (j) (k) (l) (m) (n) (o) (p) (q) (r) (s) (t) (u) (v) (w) (x) (y) (z)

5-14-76 Filed indictment.

05-18-76 Case assigned to Judge Bonsal superseding 74 Cr 824.

05-19-76 Jury empanelled-trial begun before Judge Bonsal.

05-20-76 Trial cont'd. All parties rest. Motions to dismiss are denied. Bonsal, J.

06-28-76 Charge by the Court. Marshalls sworn. Jury verdict Deft. Rotardier guilty cts 1,2,3 Pena guilty cts.1,2,3.

06-30-76 Jury polled. Pre-sentence report ordered. 6-28-76 set for sentence. Defts. remanded in lieu of bail. Bonsal, J.

07-09-76 Filed Govt.'s sentencing memorandum.

Filed Judgment (atty. Theodore Krieger) Cts. 1,2,3: 3 yrs. impr. ea. ct. conc. Deft. is to receive credit for time already served. Deft. advised of his right to appeal. Deft. remanded. Bonsal, J. issued all copies.

Filed deft's notice of appeal from judgment of 6-30-76. Mailed notices.

Wyatt, J.

A TRUE COPY  
RAYMOND E. BURGHARDT, CLERK  
By *[Signature]*  
Clerk

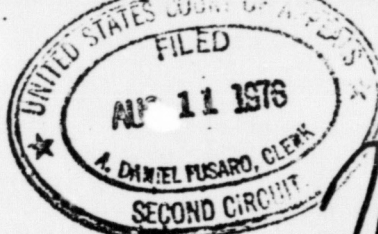
## CRIMINAL DOCKET - U.S. District Court

OFFENSE PD	JUDGE <del>XXXXXX</del> Assigned	U.S.	Case Filed Mo. Day	76	0481	02
OFFENSE NO	0839	MACDOUGAL-PENA, JUAN	05 14			
ENTEROR MIO			No. of Dets	02		
FELONY Fe: X 0208 1		(LAST FIRST MIDDLE)	JUVENILE			

U.S. TITLE/SECTION  
18:371  
18:2314

OFFENSES CHARGED  
Consp. to transport stolen securities. 1  
Interstate transportation of stolen securities. 2, 3

ORIGINAL COUNTS



U.S. MAG. CASE NO	
BAIL - RELEASE	
<input type="checkbox"/> Denied	<input type="checkbox"/> Fugitive
<input type="checkbox"/> Set	<input type="checkbox"/> Pers. Recog
<input type="checkbox"/> S	<input type="checkbox"/> PSA
CONDITIONS	
<input type="checkbox"/> Date	<input type="checkbox"/> 10% Deposit
<input type="checkbox"/> Bail Not Made	<input type="checkbox"/> Surety Bond
<input type="checkbox"/> Status Chances (See Docket)	<input type="checkbox"/> Collateral
<input type="checkbox"/> 3rd Cust	<input type="checkbox"/> Other

## II. KEY DATES &amp; INTERVALS

ARREST or U.S. Custody Began	INDICTMENT High Risk Date Information	ARRAIGNMENT Trial Set For Voi Dire	TRIAL Trial Began Trial Ended	SENTENCE Disposition of Offense On All Charges On Lesser Offenses WOP: WP On Government Motion
Summons Served	Indict. Waived	1st Plea	<input type="checkbox"/> G <input type="checkbox"/> NOL	<input type="checkbox"/> Convicted
First Appearance	In Charging District	Final Plea	<input type="checkbox"/> G. Plea W/Drawn	<input type="checkbox"/> Acquitted
	Superseding Indict/info		<input type="checkbox"/> G <input type="checkbox"/> NOL	<input type="checkbox"/> Dismissed
	5-14-76			

Search Warrant	Issued	DATE	INITIAL/NO.	MAGISTRATE	INITIAL/NO.	OUTCOME
Summons	Issued			INITIAL APPEARANCE DATE		
Arrest Warrant Issued	Served			PRELIMINARY EXAMINATION		
COMPLAINT				REMOVAL HEARING		
OFFENSE (in Complaint)				WAVED		
				NOT WAVED		
				INTERVENING INDICTMENT		

U.S. Attorney or Asst.

James E. Ne. land  
791-0047

ATTORNEYS

A TRUE COPY  
RAYMOND F. BURCHARDT, Clerk

By

Deputy Clerk

Rotardier, et al.

DATE	DOCUMENT NO.	PROCEEDINGS
5-14-76		Filed indictment. Case assigned to Judge Bonsal superseding 74 Cr 824.
05-18-76		Jury empanelled-trial begun before Judge Bonsal.
05-19-76		Trial cont'd. All parties rest. Motions to dismiss are denied. Bonsal, J.
05-20-76		Charge by the Court. Marshalls sworn. Jury verdict Deft. Rotardier guilty cts 1,2,3 Pena guilty cts.1,2,3 Jury polled. Pre-sentence report ordered. 6-28-76 set for sentence 6-28-76. Defts. remanded in lieu of bail. Bonsal, J.
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07-08-76		Filed deft's notice of appeal from judgment of 6-30-76. Mailed copies. Leave to appeal in forma pauperis is granted. Bonsal, J.

Wyatt, J.



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

76 CRIM. 0481

UNITED STATES OF AMERICA

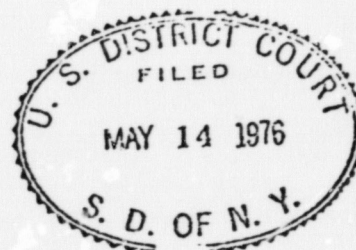
- v -

KINGSLEY ROTARDIER, a/k/a "Div  
Reveault", and  
JUAN MACDOUGAL-PENA, a/k/a  
"Dominic Reveault",

Defendants.

INDICTMENT

S 76 Cr.



COUNT ONE

The Grand Jury charges:

1. From on or about the 1st day of June, 1974 up to and including the 30th day of August, 1974, in the Southern District of New York, and elsewhere, KINGSLEY ROTARDIER, a/k/a "Div Reveault", and JUAN MACDOUGAL-PENA, a/k/a "Dominic Reveault", the defendants, and Juagin MacDougal-Pena, named herein as a co-conspirator and not as a defendant, unlawfully, wilfully, and knowingly, did combine, conspire, confederate, and agree together and with each other and with others to the grand jury known and unknown, to commit offenses against the United States, to wit, to violate Title 18, United States Code, Section 2314.

2. It was a part of said conspiracy that defendants KINGSLEY ROTARDIER, a/k/a "Div Reveault", and JUAN MACDOUGAL-PENA, a/k/a "Dominic Reveault", and others, would steal from the residences of Caroline Hyde Swilt, St. Croix, United States Virgin Islands, goods, wares, merchandise and securities of a value in excess of \$5000, and would transport said goods, wares, merchandise and securities in interstate commerce, to wit, from the St. Croix, United States Virgin Islands to New York, New York.

MICROFILM

MAY 17 1976



OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York, and elsewhere:

1. In or about July, 1974, at St. Croix, United States Virgin Islands, defendants KINGSLEY ROTARDIER, a/k/a "Div Reveault", and JUAN MACDOUGAL-PENA, a/k/a "Dominic Reveault", and others broke into an iron safe and locked file cabinet belonging to Caroline Hyde Swift and removed securities and gold and silver coins.

2. On or about July 10, 1974, defendants KINGSLEY ROTARDIER, a/k/a "Div Reveault", and JUAN MACDOUGAL-PENA, a/k/a "Dominic Reveault", flew from the Islands of St. Croix, United States Virgin Islands, to New York, New York.

3. On or about July 11, 1974, defendants KINGSLEY ROTARDIER, a/k/a "Div Reveault", and JUAN MACDOUGAL-PENA, a/k/a "Dominic Reveault", delivered stolen securities to Hayden Stone, Inc., 505 Park Avenue, New York, New York, for the purpose of opening a brokerage account.

4. On or about July 16, 1974, defendant KINGSLEY ROTARDIER, a/k/a "Div Reveault", JUAN MACDOUGAL-PENA, and others delivered stolen coins to a coin dealer at 3 East 57th Street, New York, New York in return for \$23,719.20.

(Title 18, United States Code, Section 371).

COUNT TWO

The Grand Jury further charges:

On or about the 11th day of July, 1974, in the Southern District of New York, and elsewhere, KINGSLEY ROTARDIER, a/k/a "Div Reveault", and JUAN MACDOUGAL-PENA, a/k/a "Dominic Reveault", the defendants, unlawfully, wilfully and knowingly

EN:slc  
-737

did transport and cause to be transported in interstate commerce between St. Croix, United States Virgin Islands, and New York, New York, the following securities of a value in excess of \$5,000:

<u>No. of Shares</u>	<u>Issuing Corporation</u>	<u>Serial No.</u>
500	Northgate Exploration Limited	33862
000	Federal Resources Corporation	JU 9298
100	O'Okiep Copper Company	20646
100	Texas Gulf Sulphur	D 419275
100	Texas Gulf Sulphur	D 419274
100	Texas Gulf Sulphur	D 419273
100	New York and Honduras	
	Rosario Mining Company	N 10061
111	New York and Honduras	
	Rosario Mining Company	NU 02396
218	New York and Honduras	
	Rosario Mining Company	NU 15297
2	New York and Honduras	
	Rosario Mining Company	NO 132190
6	New York and Honduras	
	Rosario Mining Company	NO 12641
2	New York and Honduras	
	Rosario Mining Company	NO 25643
225	Rosario Resources Corporation	NU 10105
8	Rosario Resources Corporation	NO 39450

knowing the same to have been stolen, converted and taken by fraud.

(Title 18, United States Code, Section 2314.)



COUNT THREE

The Grand Jury further charges:

On or about the 16th day of July, 1974, in the Southern District of New York, KINGSLEY ROTARDIER, a/k/a "Div Reveault", and JUAN MACDOUGAL-PENA, a/k/a "Dominic Reveault", the defendants, unlawfully, wilfully and knowingly did transport and cause to be transported in interstate commerce between the St. Croix, United States Virgin Islands, and New York, New York coins of a value in excess of \$5,000, knowing the same to have been stolen and converted.

(Title 18, United States Code, Section 2314.)

James M. Bueh  
FOREMAN

A TRUE COPY

RAYMOND F. BURGHARDT, Clerk

By [Signature]

Deputy Clerk

Robert B. Fiske, Jr.  
ROBERT B. FISKE, JR.  
United States Attorney

**United States District Court**

SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

KINGSLEY ROTARDIER, a/k/a "Div  
Reveault", and  
JUAN MACDOUGAL-PENA, a/k/a  
"Dominic Reveault",

Defendants.

**INDICTMENT**

S 76 Cr.

18 U.S.C. §§ 371 and 2314.

ROBERT B. FISKE, JR.

United States Attorney.

A TRUE BILL

*James M C Busk*  
Foreman.

# JUDGE BONSALE

MAY 18 1976 BY RY EMANUELLED, TRIAL BEGUN  
MAY 19 1976 TRIAL CONTD ALL PARTIES REST.  
MOTIONS TO DISMISS AND DENIED BONSALE J.  
SUMMONATIONS BY COUNSEL

MAY 20 1976 CHARGE BY THE COURT MARSHALLS SWORN  
JURY VERDICT DEPT. ROTARDIER GUILTY CTS 1, 2, 3.  
PENA GUILTY 1, 2, 3, JURY POLLED. PRE-SENTENCE  
REPORT ORDERED, JUNE 28 1976 SET FOR  
SENTENCE DEPTS REMANDED IN LIEU OF BAIL  
BONSALE J.

JUN 30 1976 SENTENCE KINGSLEY ROTARDIER A/K/A  
DIN REVERULT. (ATTY THEOPHORE KAIEGER PRESENT) 3 YEARS IMPRISONMENT ON CTS 1, 2, 3.  
TO RUN CONCURRENTLY  
GIVEN CREDIT FOR TIME SERVED  
ADVISED OF RIGHT TO APPEAL  
REMANDED BONSALE J.

SENTENCE JOHN MACDOUGAL - PENA  
A/K/A. DOMINIC REVERULT. (ATTY ROBERT  
MITCHELL PRESENT) 3 YEARS IMPRISONMENT  
ON EACH OF CTS 1, 2, 3. TO RUN CONCURRENTLY  
GIVEN CREDIT FOR TIME SERVED  
ADVISED OF RIGHT TO APPEAL  
REMANDED BONSALE J.



1 cmrm

265

2 UNITED STATES OF AMERICA

3 vs.

76 Crim. 481

4 KINGSLEY ROTARDIER, and

JUAN MAC DOUGAL PENA,

5 Defendants

May 20, 1976

10:05 a.m.

6

7 CHARGE OF THE COURT

8

(In open court; jury present.)

9

THE COURT: Good morning, ladies and gentlemen.

10

Nice to see you this morning. Thank you for your promptness.

11

THE CLERK: The Court will now charge the jury.

12

Will you lock the door please, Marshal?

13

THE COURT: Madame Forelady, as you are, Mrs.

14

Horne, by virtue of occupying the first chair, and ladies

15

and gentlemen of the jury.

16

First of all, I would like to thank each of you

17

for the care and attention you have shown throughout this

18

short trial and tell you that I appreciate the sacrifices

19

I know each of you has had to make in your own personal

20

lives so you could serve in this very important capacity of

21

being on a federal jury. I am sure you will bear with me

22

and give me the same degree of attention you have shown

23

throughout so that you may understand the principles of law

24

which apply to this case.

25

Now, remember as I told you when you were selected,

2 that it is your duty to weigh the evidence calmly and  
3 dispassionately without any sympathy, without any prejudice  
4 with respect to either the government or to either of these  
5 two defendants.

6 I told you that everyone appearing before this  
7 bar of justice is entitled to an absolutely fair and impartial  
8 trial, and your verdict here must be based solely on the  
9 evidence, the testimony you heard from that witness stand  
10 and on the exhibits which were received during the trial  
11 and on nothing else at all.

12 I told you also when you were selected that it was  
13 my function to instruct you as to the law and as to this  
14 you must accept my instructions, but on the other hand, you,  
15 the jury, are the sole judges of the facts. It is not what  
16 a lawyer says the witness testified to, or what a document  
17 contains, or what I say on these subjects. It is what you,  
18 the jury, remember and decide.

19 I also told you at the outset that during the  
20 course of the trial I would have conversations with one or  
21 the other of the lawyers. Indeed I did and I sustained  
22 objections and I overruled them. I told you at that time,  
23 ladies and gentlemen, and I repeat, do not pay any attention  
24 to these conversations.

25 And above all, draw no inference from anything that



1  
2 I may have said during the trial that might lead any of you  
3 to believe that I favor one side or the other, because of  
4 course I do not. That is not my province, it is yours and  
5 only yours to determine the guilt or innocence of these  
6 defendants.

7 Now, throughout my charge, ladies and gentlemen,  
8 I will instruct you that you may not convict either of  
9 these defendants unless and until you are satisfied that the  
10 government has proven each element comprising the crime  
11 charged beyond a reasonable doubt.

12 Now, what do we mean by beyond a reasonable doubt?  
13 Well, the words suggest the answer of course. It is a doubt  
14 based on reason, a doubt which a reasonable man or woman  
15 might entertain. But a reasonable doubt is not a fanciful  
16 doubt, it is not an imagined doubt, it is not a doubt that  
17 a juror might conjure up in order to avoid performing an  
18 unpleasant task. It is a reasonable doubt. It is a doubt  
19 which arises in a juror's mind because of something in the  
20 evidence in the case or the absence of evidence in the case.  
21 It is the kind of doubt which would cause a reasonable man or  
22 woman in a more serious or important matter in his or her  
23 own life to hesitate to act.

24 And the burden is on the government to prove the  
25 guilt of a defendant beyond a reasonable doubt. Now, the

government need not prove guilt beyond all possible doubt. If that were the rule few people, however guilty they might be, would ever be convicted. In this world of ours it is practically impossible for one to be absolutely and completely convinced of any controverted fact which by its nature is not susceptible to mathematical precision or to mathematical certainty.

So the law is the government must prove the guilt of a defendant beyond a reasonable doubt, not beyond all possible doubt.

When I review the indictment with you, ladies and gentlemen, I remind you as I mentioned to you earlier that the indictment is merely the way the government brings into court people who it believes have violated the law. I told you that the indictment is not evidence of the guilt of either of these defendants, and the indictment does not detract in any degree from the presumption of innocence with which the law surrounds each of these defendants until his guilt is proven.

And this presumption of innocence remains with each of these defendants throughout the trial and applies to the consideration of each of the elements of the crime charged. And this presumption of innocence remains unless and until you, the jury, should find that the government has



proved the crime charged beyond a reasonable doubt.

Each of these defendants has entered a plea of not guilty here, and by doing that each of them has put in issue every material element of the crime, and as I say, the government must prove them beyond a reasonable doubt. And this burden has remained on the government throughout the trial. And if the government has not proved to you the guilt of a defendant beyond a reasonable doubt, then of course you would find that defendant not guilty.

Now, ladies and gentlemen, as you see, there are two defendants here. They are charged here as two individuals. And the guilt or innocence of each of them must be passed upon by you separately. Each of these defendants has the right to the same consideration on your part as if he were being tried alone.

Now this has been a short trial, ladies and gentlemen, and yesterday afternoon you heard the evidence reviewed for you at some length by the lawyers. I am not going to review it all again with you. However, I thought it might help you in your recollections, and it is only for that purpose, if I mentioned what I recall to be the contentions of the parties here.

As I recall, the government is contending that the



defendants Kingsley Rotardier and Juan MacDougal Pena conspired with each other and with others to steal property from Mrs. Swift's residences in St. Croix which I think she said were the Hill Villa and The Chalet, and to transport the stolen property from St. Croix in the United States Virgin Islands to New York.

The government further contends that they did steal this property and that they did transport it from St. Croix to New York.

There were two types of property as I recall it, one was some stock certificates, one type, and the other were these coins, silver coins, dollars, half dollars, quarters, dimes as I recall it.

And with respect to the stock certificates which I think were received in evidence as Exhibits 7 through 20, which were registered in the name of Steven Hyde-Swift, Caroline Hyde-Swift and Arthur M. Hyde Foundation, the government contends that these were stolen from the locked fireproof file cabinet in the bathroom at Hill Villa sometime between May 9, 1974 when Mrs. Swift left on a vacation trip, and July 10, 1974 when, as I recall it, Mrs. Westerman testified that she telephoned Mrs. Swift telling her that the cabinet had been tampered with.

And in further contending that the defendants

transported these stock certificates from St. Croix to New York you will remember the testimony of Mr. Sherman, I think it was, that on July 11, 1974 the defendants came to his office at Hayden Stone to open an account and presented the stock certificates at that time.

Now, with respect to the silver coins the government contends that these were stolen in part from the cabinet at Hill Villa and in part from the old safe, I think it was called, in a bedroom at The Chalet. You remember the one that had that top on it. Sometime between May 9, 1974, when Mrs. Swift left on her vacation trip, and July 10, 1974, when as I recall it Mrs. Westerman, after checking, telephoned Mrs. Swift that the contents of the old safe at The Chalet had been removed.

And with respect to the silver coins, as I recall it, there was the testimony of a Mr. Genot, I think his name was, who was Vice President of Harmer, Rooke Numismatists Ltd. Numismatists I still have great trouble with. That is a coin dealer. And that these three individuals brought in some samples of coins they said were being offered I think from the Caribbean, I think he said, and that on July 16, 1974 three individuals came in with a large quantity of silver coins which he bought, and he said that he issued a check and a purchase memorandum and as I recall it, both of



2 these documents were in the name of Kingsley Rotardier.

3 Now, of course the defendants deny all of the  
4 government's contentions. They deny that they conspired  
5 with each other or with anyone else to steal any property  
6 from Mrs. Swift or to transport the stolen property from St.  
7 Croix to New York, and they deny that they did transport the  
8 stock certificates or the coins from St. Croix to New York.

9 In addition, as I recall it from Mr. Mitchell's  
10 summation yesterday, the defendant Mr. Pena denies that there  
11 is any evidence at all tying him into these crimes even if  
12 they were found to have been committed.

13 Now, ladies and gentlemen, there are three counts  
14 to this indictment, and I remind you again that the indict-  
15 ment is merely a statement of charges and is not evidence.  
16 I will send a copy of the indictment into you with that  
17 understanding so that you will have it in the jury room, and  
18 that is merely for the purpose of keeping track of the three  
19 counts, the first of which I will refer to as the conspiracy  
20 count and the other two, one dealing with the stock certi-  
21 ficates and the other dealing with the coins, are known as  
22 substantive counts.

23 Now, all three counts involve the same statute  
24 which is Section 2314 of Title 18 of the United States Code,  
25 and the statute provides in relevant part as follows:

1  
2 "Whoever transports in interstate or foreign  
3 commerce" -- now here, if the transportation occurred it was  
4 between the Virgin Islands and New York, and I don't think  
5 there is any disagreement here that such a transportation  
6 is in interstate commerce -- "securities or money" -- going  
7 on with the statute -- "of the value of \$5000 or more" --  
8 well, you recall here that with respect to the stock certi-  
9 ficates the parties stipulated that the stock certificates  
10 had a value of some \$36,000 I believe, and with respect to  
11 the coins the gentleman from the coin place said he issued  
12 a check for the coins somewhere around \$23,000 as I recall it,  
13 and both those figures, if you should find of course all the  
14 other elements, the value of the stock certificates or of the  
15 coins, would be in excess of \$5000.

16 Now, going back to the statute, "Whoever transports  
17 in interstate or foreign commerce securities or money of the  
18 value of \$5000 or more knowing the same to have been stolen,  
19 converted, or taken by fraud is guilty of a crime" under  
20 Section 2314.

21 As I mentioned to you, ladies and gentlemen, the  
22 first count of the indictment is the conspiracy count which  
23 charges each of the defendants with conspiracy to violate  
24 this section, and under Section 371 of Title 18 of the United  
25 States Code, if two or more persons conspire to commit an



2 offense against the United States, that includes conspiracy  
3 to violate the statute, and if one or more of them does any  
4 act to affect, to carry out the purposes of the conspiracy,  
5 each of them is guilty of the crime of conspiracy.

6 So the point here is that a conspiracy to violate  
7 the statute which I just read to you is a crime separate and  
8 apart from the actual commission of the transportation. So  
9 count 1 of the indictment reads, "The Grand Jury charges,  
10 1, from on or about the 1st day of June, 1974, up to and  
11 including the 30th day of August, 1974," -- there is nothing  
12 magic about these dates except that the conspiracy must have  
13 existed between these two dates, and as I recall the testimony  
14 the events here largely took place in July, 1974.

15 Going on with the indictment -- "in the Southern  
16 District of New York" -- well, the Southern District of New  
17 York includes Manhattan, Bronx and a lot of other places and  
18 you will recall the evidence as to where these things  
19 happened -- "and elsewhere" -- elsewhere would include, I  
20 suppose, the Virgin Islands, "Kingsley Rotardier, also known  
21 as Div Reveault" -- I think there was testimony from Mrs.  
22 Swift and Mrs. Westerman that she knew Mr. Rotardier as Div  
23 Reveault -- "and Juan MacDougal Pena, also known as Dominic  
24 Reveault" -- I think here Mrs. Westerman called him Dom, I  
25 don't remember the Reveault but anyway it is your recollection

1 that governs -- "the defendants, and Juagin MacDougal Pena,  
2 named herein as a co-conspirator and not as a defendant" --  
3 I don't remember anything about him at the trial -- "unlaw-  
4 fully, wilfully and knowingly did combine, conspire,  
5 confederate and agree together and with each other and with  
6 others to the Grand Jury known and unknown to commit  
7 offenses against the United States, to wit, to violate Title  
8 18, United States Code, Section 2314;" -- which I read to  
9 you.  
10

11 "2, it was part of said conspiracy that defendants  
12 Kingsley Rotardier and Juan MacDougal Pena, and others,  
13 would steal from the residences of Caroline Hyde-Swift, St.  
14 Croix, United States Virgin Islands, goods, wares, merchandise  
15 and securities of a value in excess of \$5000 and would  
16 transport" -- and this is the crime -- "and would transport  
17 said goods, wares, merchandise and securities in interstate  
18 commerce, to wit, from St. Croix, United States Virgin Islands  
19 to New York, New York."

20 Then the indictment goes on to cite some overt  
21 acts which I will read you in a moment.

22 Now, in considering this count 1, the conspiracy  
23 count, ladies and gentlemen, the government must prove three  
24 elements, and each of these elements the government must  
25 prove beyond a reasonable doubt. First, that there was a



1 conspiracy here to transport stolen property, in this case  
2 securities and coins from St. Croix to New York. Second,  
3 that the defendant you are considering -- and I remind you  
4 again of course, you will consider each of these defendants  
5 separately -- defendant you are considering unlawfully,  
6 wilfully and knowingly was a member of this conspiracy  
7 knowing that its purpose was to transport the stock and coins  
8 from the Virgin Islands to New York; and third, that at  
9 least one of the overt acts, and I will read them to you in  
10 a minute, at least one of the overt acts listed in the  
11 indictment is committed by someone whom you find to be a  
12 member of the conspiracy. Not necessarily the defendant you  
13 are considering but by a person whom you find to have been  
14 a member of the conspiracy. That the overt act was committed  
15 in furtherance of the conspiracy to transport stolen property  
16 from St. Croix to New York.

17  
18 So I suppose you will ask me first what is a  
19 conspiracy. I told you it was a separate crime. Well, a  
20 conspiracy is a combination or a partnership, if you will, between  
21 two or more people to violate the law, to accomplish an  
22 unlawful purpose. In a sense I suppose you would say it is  
23 a partnership in crime.

24 Now, the government does not have to prove there  
25 was any formal agreement or contract here between the

1  
2 conspirators stating the objects of the conspiracy or how  
3 it was to be carried out. It would certainly be unusual  
4 to have one. People who conspire to violate the law are  
5 hardly likely to put their agreements in writing or to make  
6 their plans known.

7           However, the government must prove that at least  
8 two persons came to a mutual understanding for the purpose  
9 of accomplishing the unlawful plan or scheme here to  
10 transport stolen property from the Virgin Islands to New  
11 York.

12           Now, of course, the fact that these defendants may  
13 have known each other or may have associated with each other,  
14 that is not enough to make them conspirators. You cannot  
15 find a man a conspirator just by guilt by association. You  
16 must find that the government has proved beyond a reasonable  
17 doubt here that there was a conspiracy to transport stolen  
18 property from St. Croix to New York.

19           If you find there was a conspiracy, it is presumed  
20 to continue as to each person you find to be a member of it  
21 until the purpose of the conspiracy is accomplished. And,  
22 of course, it is not important whether the conspiracy was  
23 successful. If you find that there was a conspiracy that is  
24 sufficient.

25           So consider the evidence, ladies and gentlemen,



1 and if you find that the government has proved beyond a  
2 reasonable doubt that there was a conspiracy here to trans-  
3 port stolen property from St. Croix to New York, then you  
4 reach the second element which the government must prove  
5 beyond a reasonable doubt, was the defendant you are consider-  
6 ing a member of that conspiracy? And here again you consider  
7 the defendants separately, Mr. Rotardier and Mr. Pena  
8 separately, and determine whether the defendant knowingly  
9 and wilfully joined in the conspiracy knowing of its unlawful  
10 purpose.  
11

12 And here you will remember that during the trial I  
13 received quite a lot of evidence subject to connection.  
14 Do you remember when I said "subject to connection?" This  
15 involved certain testimony and certain documents as I recall  
16 it.

17 Now, the connection that I had in mind was that  
18 the government here must prove, 1, that there was a conspiracy,  
19 2, that the defendant you are considering was a member of the  
20 conspiracy. If the government has proved both of these  
21 things then you may consider the evidence received subject  
22 to connection with respect to that defendant.

23 Now, here again you may not find the defendant you  
24 are considering a member of the conspiracy merely because he  
25 knew the other defendant, or others whom you think were

2 members of the conspiracy. You may not find him to be a  
3 member of the conspiracy unless the government has proved to  
4 you that he knowingly and wilfully joined it knowing its  
5 unlawful purpose was to transport the stolen property to  
6 New York.

7 So consider each defendant here and consider the  
8 evidence as to his own acts, his own statements, his own  
9 conduct. And consider the evidence as to the acts and  
10 statements of others which you heard during the trial which  
11 you find bears on the question of whether the defendant you  
12 are considering was a member of the conspiracy.

13 Now of course the guilt of a member of the  
14 conspiracy is not measured by the extent or duration of his  
15 participation, or whether he played a major, or a minor role,  
16 or whether he entered into the conspiracy at a different  
17 time, or whether he participated to a lesser degree than  
18 others. He is guilty under the conspiracy count if you find  
19 that he was a member of the conspiracy. However, you must  
20 find from the evidence that he knew the purpose of the  
21 conspiracy.

22 So, ladies and gentlemen, if you find here that the  
23 government has not proved that there was a conspiracy, or  
24 if they have, the defendant you are considering they have not  
25 proved that he was a member of the conspiracy, then of course



you would find that defendant not guilty on the conspiracy count.

On the other hand, if the government has proved to you that there was a conspiracy and the defendant you are considering was a member of it, then you reach the third element which the government must prove beyond a reasonable doubt, and that is whether one or more of the members of the conspiracy, and this does not have to be the defendant you are considering, any member of the conspiracy committed at least one of the overt acts charged in the indictment, and that the overt act was committed in furtherance of the conspiracy.

And the indictment lists four overt acts which I will read to you. An overt act is anything, it does not have to be a crime. It could be a telephone conversation, it could be a trip, could be anything at all. But the overt acts that are charged in this indictment are as follows:

"In furtherance of such conspiracy and 'to affect' the objects thereof, the following overt acts were committed in the Southern District of New York and elsewhere:

"1, in or about July 1974 at St. Croix, United States Virgin Islands, defendants Kingsley Rotardier and Juan MacDougal Pena and others broke into an iron safe and locked file cabinet belonging to Caroline Hyde-Swift and removed

securities and gold and silver coins." This refers to both the iron safe which, as I recall it, was at The Chalet and the locked file cabinet that was in Hill Villa.

"2, on or about July 10, 1974 defendants Kingsley Rotardier and Juan MacDougal Pena flew from the Island of St. Croix, United States Virgin Islands to New York, New York." Now, defendants of course deny that. The government says the evidence so establishes.

"3, on or about July 11, 1974 defendants Kingsley Rotardier and Juan MacDougal Pena delivered stolen securities to Hayden Stone, Inc., 505 Fifth Avenue, New York, for the purpose of opening a brokerage account." Here you will recall the testimony of Mr. Sherman, I think it was.

"4, on or about July 16, 1974 defendants Kingsley Rotardier, Juan MacDougal Pena and others delivered stolen coins to a coin dealer at 3 East 57th Street, New York, New York in return for \$23,719.20." I think this was referred to by Mr. Genot in his testimony, the coin dealer.

Now, as I mentioned to you, the government need not prove all of these four overt acts. However, the government must prove that at least one of these overt acts was committed and that it was committed in furtherance of the conspiracy.

So summarizing the conspiracy count, ladies and



gentlemen, the government has the burden of proof of establishing beyond a reasonable doubt, first, that there was a conspiracy here to transport stolen property from St. Croix to New York; second, that the defendant you are considering knowingly and wilfully joined the conspiracy, knowing of its unlawful purpose; and, third, that at least one of these four overt acts was committed not necessarily by the defendant you are considering, but by someone whom you find to be a member of the conspiracy, and that it was committed in furtherance of the conspiracy.

So much for count 1, the conspiracy count. The two other counts, as I mentioned to you, are substantive counts, count 2 involving the stock certificates and count 3 involving the silver coins.

Now, the indictment as to count 2, and I repeat again, it is merely a charge, count 2 reads, "The Grand Jury further charges on or about the 11th day of July, 1974, in the Southern District of New York and elsewhere, Kingsley Rotardier and Juan MacDougal Pena, the defendants, unlawfully, wilfully and knowingly did transport and cause to be transported in interstate commerce between St. Croix, United States Virgin Islands, and New York, New York, the following securities of a value in excess of \$5000"-- and here is a list of a number of shares and issuing corporations and the number

of certificates. As I recall it, these are Exhibits 7 to 20 which were received in evidence and I am not going to repeat all the names of them. -- "knowing the same to have been stolen, converted or taken by fraud."

Now, here again, ladies and gentlemen, with respect to count 2 consider each of the two defendants separately, and in order to find the defendant you are considering guilty under count 2, the government must have proved beyond a reasonable doubt each of the following four elements:

"First, that the defendant you are considering transported and caused to be transported the securities in interstate commerce." I think I covered the interstate commerce point. Here as I recall it, Mrs. Westerman testified that she saw both the defendants at Hill Villa on St. Croix on July 10, 1974. I think she said something about their being in or around a Volkswagen van.

Then you recall that Mr. Sherman testified that he saw the defendants in his New York office on July 11, 1974, at which time the stock certificates were delivered to him for the purpose of opening a margin account. Now, here the government contends, and of course each of the defendants deny, that this evidence establishes that the defendants did transport the securities and caused them to be transported from St. Croix to New York City.



1  
2 So, consider the evidence, ladies and gentlemen,  
3 and if you find that the government has proved beyond a  
4 reasonable doubt that the defendant you are considering  
5 transported the securities, then you must consider the  
6 second element which the government must prove beyond a  
7 reasonable doubt and that is that the securities had an  
8 aggregate value in excess of \$5000. I think I reviewed this  
9 with you before and I don't think I have anything to add.

10 Turning to the third element, the government must  
11 prove beyond a reasonable doubt that the securities were  
12 stolen. And here I need not review the testimony about that.  
13 You have heard a great deal about it. All they mean by  
14 "stolen" of course is that somebody took the stock certifi-  
15 cates out of the safe, or the box with the intention of  
16 depriving the owner of his benefits of ownership.

17 And then the fourth element the government must  
18 prove beyond a reasonable doubt is that the defendant you are  
19 considering knew when he transported the securities that they  
20 had been stolen. Now, the government need not prove that the  
21 defendant knew they had been stolen from Mrs. Swift, but  
22 the government must prove that the defendant knew that the  
23 securities had been stolen.

24 Now, you will recall here, as I understand it, the  
25 government is contending that the theft occurred sometime

1 between May 9, 1974, when Mrs. Swift said she locked them in  
2 the filing cabinet and went on a vacation, and July 10, 1974,  
3 when Mrs. Westerman testified that she called Mrs. Swift and  
4 told her that the cabinet had been tampered with. This is  
5 a period of something like two months, possibly two months.  
6

7 So here, ladies and gentlemen, if you find on the  
8 evidence that the securities had been recently stolen, use  
9 your own judgment as to what "recently" might mean under the  
10 circumstances of this case. You may infer, but you are not  
11 required to, it is entirely up to you, but you may infer by  
12 the fact of the defendant's possession of the securities  
13 that he knew the securities had been stolen, unless on all  
14 the evidence you find another satisfactory explanation of  
15 the defendant's possession of the securities.

16 Now, going back to the conspiracy count for a  
17 minute, I want you to reach a verdict on the conspiracy count  
18 before you reach these other two counts. If on the  
19 conspiracy count you have found there was a conspiracy, and  
20 if you have found that the defendant you are considering was  
21 a member of it, and if you have found that the transportation  
22 of the securities, or the stocks from St. Croix to New York  
23 was in furtherance of that conspiracy, then you may find that  
24 the defendant you are considering aided and abetted -- all I  
25 mean by aided and abetted is that he assisted, assisted in



the transportation of the stocks and is guilty under count 2.

But if you have not found a conspiracy under count 1, or if you have not found that the defendant you are considering was a member of it, then you may not find that defendant guilty under count 2 unless the government has proved to you beyond a reasonable doubt that the defendant knowingly assisted and aided in the transportation of the securities, knowing that they were stolen, that he sought in some way to make the venture his own, that he had a financial or other stake in the enterprise. So much for count 2, ladies and gentlemen.

I am turning to count 3 which involves the coins. The language is substantially the same as count 2. "The Grand Jury charges on or about the 16th day of July, 1974, in the Southern District of New York, Kingsley Rotardier and Juan MacDougal Pena, the defendants, unlawfully, wilfully and knowingly did transport and cause to be transported in interstate commerce between St. Louis, United States Virgin Islands, and New York, coins of a value in excess of \$5000 knowing the same to have been stolen and converted."

So here you do exactly the same thing that you do with respect to count 2. You consider the defendants separately of course, and the government must prove the same

four elements beyond a reasonable doubt. First, that the defendant you are considering transported and caused to be transported the silver coins, and I think I reviewed some of the testimony about this before; second, that the silver coins had an aggregate value in excess of \$5000, and I think I covered that with you; third, that the coins had been stolen, I think I have reviewed this testimony with you on that; fourth, that the defendant you are considering knew the coins had been stolen when he transported them. And here again the defendant need not have known they were stolen from Mrs. Swift or at any of these places but the government must prove that he knew they were stolen property.

So in count 3 do the same thing you do in count 2, and if you find that the government has not proved each of these elements beyond a reasonable doubt, you will find the defendant you are considering not guilty under that count.

On the other hand, if you find the government has proved each of these elements beyond a reasonable doubt, you would find the defendant guilty under the count you are considering.

Now, you observe from all this, ladies and gentlemen, that one of the essential elements in the case is criminal intent. You remember the indictment speaks of unlawfully, wilfully, knowingly. The government must prove



2 that the defendant had a criminal intent in doing this.

3 And how do you determine that? Well, an act is  
4 done knowingly and wilfully if it is done voluntarily and  
5 purposely. An act is done wilfully, knowingly and unlawfully  
6 if it is done with an evil motive or purpose, such as  
7 violating the law.

8 But an act is not done wilfully, knowingly or  
9 unlawfully if it is done by mistake or by carelessness or  
10 other innocent reason.

11 Now, of course it is impossible to look into the  
12 defendant's mind to prove exactly what he was considering or  
13 what his intentions were. We cannot look into his mind and  
14 see what knowledge he had at the time to determine his  
15 specific intention. But these are matters which you, the  
16 jury, can determine from a careful consideration of the facts  
17 and circumstances brought out during the trial.

18 The knowledge and intent, the wilfullness if you  
19 will, of a defendant, may only be determined when put into  
20 the context of the circumstances surrounding his acts and the  
21 inferences which you, the jury, find may be reasonably drawn  
22 from them.

23 You might ask yourselves whether these transactions  
24 were normal or abnormal, whether they were open or surrep-  
25 ticious, whether you think the background of the defendant

made it likely or unlikely that he fully understood what he was doing. Whether you think he had a motive. Whether you think he had a financial interest in the outcome. These are the kinds of questions, ladies and gentlemen, of course not the only ones, that you should ask yourselves to determine the knowledge and intentions of these defendants.

And of course I do not suggest any answers, because, after all, in your own daily affairs you are continually called upon to use your common sense and experience to determine from the actions or statements of others what their real intentions and purposes are. And please do exactly the same thing here.

Now, the law recognizes two types of evidence, ladies and gentlemen, direct evidence and circumstantial evidence.

Direct evidence is the testimony of a witness who personally observed a transaction or participated in the activity he is describing.

Circumstantial evidence consists of circumstances from which the jury may infer by a process of reasoning certain facts which are sought to be established as true.

As I recall it, there was quite a little flurry among the summations about circumstantial evidence, and examples and a little disagreement on the thought on that.



1 cmrm  
2 But I think probably a classic example of circumstantial  
3 evidence is, during these rainy days if you happened to go  
4 home one day and went into your apartment and somebody was  
5 in there watching television and your hat or your coat was  
6 wet and they looked at you and they said, "Gee, it is raining  
7 outside," they did not look outside to see if it was raining,  
8 they saw your hat and coat. And by a process of reasoning  
9 they concluded it is raining outside.

10 That is circumstantial evidence. And of course  
11 there is a good deal, as the lawyers indicated yesterday,  
12 there is a good deal of circumstantial evidence in this case.

13 Now, both direct evidence and circumstantial  
14 evidence are good evidence and no greater degree of certainty  
15 is required when the evidence is circumstantial than when it  
16 is direct. But in either case the government must prove the  
17 guilt of a defendant beyond a reasonable doubt.

18 And of course different inferences may be drawn by  
19 you whether the evidence is direct or circumstantial. The  
20 government asks you to draw one set of inferences while the  
21 defendants ask you to draw another. But it is for you, the  
22 jury alone, to decide what inferences you will draw from the  
23 evidence and what facts you find to have been proven here.  
24 But remember that these inferences must be reasonable infer-  
25 ences based on the evidence or lack of evidence. Do not base

2 an inference on speculation. Do not speculate. There must  
3 be reasonable inferences drawn from the evidence.

4 Now, ladies and gentlemen, you are the exclusive  
5 judges of the credibility of the witnesses who appeared  
6 before you.

7 Now, the defendants offered no evidence. You must  
8 draw no inference unfavorable to them because they offered  
9 no evidence here.

10 And how do you determine the credibility of these  
11 witnesses who did appear before you? Well, here again,  
12 ladies and gentlemen, use your own common sense. You saw  
13 them testify. How did they impress you? Did you think they  
14 were testifying frankly, candidly and fairly? So here you  
15 apply your common sense and experience just as you do in  
16 determining an important matter in your own private lives.

17 When you are called upon to decide whether you  
18 have been given a true picture of a given situation, I think  
19 you would consider a witness' demeanor, his or her background,  
20 occupation or business. Consider a witness' candor or lack  
21 of it, a witness' possible bias, a witness' means of infor-  
22 mation and the accuracy of a witness' recollection. You  
23 consider whether a witness' testimony is supported or whether  
24 you think it is contradicted by other testimony or circum-  
25 stances which you find to be credible.



2 And a witness may be discredited or impeached by  
3 contradictory evidence or by evidence that he made statements  
4 inconsistent with his present testimony. And if you find  
5 that any of these witnesses were misleading you or testifying  
6 falsely, you can reject all the testimony of that witness if  
7 you want to. You can accept part of a witness' testimony  
8 if you find it reliable. And you may reject the rest.

9 Neither of the defendants, neither Mr. Rotardier  
10 nor Mr. Pena took the stand at this trial, and you must not  
11 consider this as any evidence whatsoever against them or as  
12 any presumption unfavorable to them. Indeed, do not let  
13 this enter into your deliberations. Because as I have told  
14 you, ladies and gentlemen, the government here has the burden  
15 of proving a defendant guilty beyond a reasonable doubt. A  
16 defendant is not required to prove his innocence.

17 You have the right, ladies and gentlemen, to see  
18 any or all of the exhibits which have been introduced into  
19 evidence.

20 I might ask you right now, do you want me to ask  
21 the lawyers to send all these exhibits into you when you  
22 start your deliberations? I will give the marshal the  
23 exhibits to send in to you so you will have them.

24 And as you deliberate, ladies and gentlemen,  
25 remember that a jury deliberation is one in which everybody

expresses their views, exchanges views. Do not be afraid to change your original view because of pride of opinion or stubbornness or any other reason should you become convinced that your original view was wrong.

But on the other hand, ladies and gentlemen, never surrender your honest conviction. Never do that. Whether the other people disagree with you or whether you are outnumbered, never surrender your honest conviction.

You will seek to arrive at a verdict here providing you can do this consistently with the conscientious convictions of all twelve on the jury. Of course it is very important here from both the government's point of view and from each of these defendant's point of view that their case be decided by you.

And your verdict here, ladies and gentlemen, must be a unanimous verdict, a verdict joined by each and every one of you reflecting each of your conscientious convictions.

Now, I remind you also again that there are two defendants here and you may find one defendant guilty and one defendant not guilty, that is entirely up to you, but you consider them each separately. You may find both of them not guilty or both of them guilty, that is a matter for you to determine.

If you find a defendant here not guilty, please



1 do not hesitate for any reason to render a verdict of not  
2 guilty. But, on the other hand, if you find the defendant  
3 guilty under these instructions, you must render a verdict  
4 of guilty and must not hesitate because of sympathy or any  
5 other reason.  
6

7 Please do not consider the question of punishment  
8 of a defendant if you find him guilty. That duty rests with  
9 the Court. And you must not allow it to enter into your  
10 deliberations in any way or affect you or make you seek to  
11 avoid the performance of an unpleasant task."

12 In conclusion, ladies and gentlemen, I am sure  
13 that if you listen to the views of your fellow jurors and  
14 if you apply your common sense, you will reach a fair  
15 verdict here, and remember that that verdict must be rendered  
16 without fear, without favor, without prejudice and without  
17 sympathy.

18 Will counsel come forward a minute, please?

19 (At the side bar.)

20 MR. KRIEGER: Your Honor, you were gracious enough  
21 to charge the jury as to Mr. Pena's theory of defense but  
22 you omitted my theory, to wit, that there was no conspiracy--

23 THE COURT: I think I covered that. I said both  
24 defendants, I covered him separately just because of the lone  
25 wolf tactic that he had. But the other things I covered on

both of you. Deny that there was any conspiracy, deny all that. I have got that.

MR. MITCHELL: I wanted to be a lone wolf as well.

THE COURT: Well, I am afraid I will have to give you to exception on that. He was a particularly lone wolf.

All right, but I think I covered it.

MR. KRIEGER: The Pinkerton charge aspect we have already noted our exception so we need not do anything more on that.

THE COURT: All right.

MR. MITCHELL: Your Honor, I want to take exception but in a very polite way to the fact that when you were opening up your charge to the jury you told them that the verdict must be based solely on the evidence in the case, the documents and so and so forth. But you left out something which may cause trouble.

THE COURT: I covered that twice.

MR. MITCHELL: Under "reasonable doubt."

THE COURT: I covered it twice. I covered it in "reasonable doubt" and some other place too. I think I covered it on "circumstantial evidence." You have got it. You have an exception.

MR. MITCHELL: One other thing is, and it is a matter of I think it could be cured very easily by your



1  
2 telling the jury that your statement of the facts, which I  
3 am not sure whether you did, is not to be taken as the  
4 actual facts but they are to be the judges.

5 THE COURT: I think I covered that and I said --  
6 I told them to disregard anything I said about the facts.

7 MR. MITCHELL: All right, fine.

8 MR. NESLAND: I do have one, your Honor. Mr.  
9 Mitchell made an argument which suggested that obviously  
10 these defendants could not transport 500 pounds of coins.  
11 Obviously that is true and I would ask the Court to instruct  
12 the jury that "caused to be transported" means either they  
13 personally transported or caused them to be transported by  
14 some other means of transportation from St. Croix to New  
15 York. I just think the "caused" should be emphasized here  
16 by reason of the arguments that these people couldn't have  
17 carried 500 pounds. I don't think there is any question about  
18 it but I want them to know that they legally can be held --

19 THE COURT: I do not know about that, there were  
20 other people involved. I think I will leave it. I think I  
21 must leave it at that because I do not know how they  
22 transported it and there is no evidence how they transported  
23 it and I think I am inviting them to speculate a little on  
24 that. I think that is one of the things they have to draw  
25 on their experience, and I do not recall anything in your

summation on that subject. Did you say anything about that?

MR. NESLAND: You mean what "caused to be transported" --

THE COURT: Yes.

MR. NESLAND: I can't recall whether I did or not. I think I argued that --

THE COURT: I think they are a sensible jury and there were different dates, you know, and the Caribbean. I did say "or caused to be transported."

MR. NESLAND: I just thought it might help them by defining "caused to be transported."

MR. KRIEGER: Our joint and several --

THE COURT: Yes, your exceptions go both ways.

MR. MITCHELL: Your Honor, we will both consent to the exhibits going to the jury.

THE COURT: Fine. I think that helps. All right.

(In open court.)

THE COURT: Mr. Roe and Miss Zochlan, you have been very good alternates and all your fellow jurors have survived to now, to the crucial time when they are going to start deliberating and so it is my pleasant duty to excuse you now and to thank you very much. I hope you have enjoyed it and you can imagine what a pickle we would have been in, if any of the others here had gotten the flu or something,



1 cmrm

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2 we would have been in bad shape without you and I want to  
3 thank you verv much.

4 (Alternate jurors excused.)

5 (Marshal sworn.)

CERTIFICATE OF SERVICE

SEPTEMBER 22, 1976

I certify that a copy of this brief and appendix has been mailed to the United States Attorney for the Southern District of New York and to counsel for the co-appellant.

Irvin Gersberg